85-771

Supreme Court, U.S.
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CLERK

No. _____

In The

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT G. BARON,

Petitioner,

vs.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

ROBERT G. BARON, PETITIONER,

V.

ANDREW P. MELONI, INDIVIDUALLY AND AS SHERIFF OF THE COUNTY OF MONROE, AND THE COUNTY OF MONROE,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The petitioner, Robert G. Baron, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this Proceeding on August 12, 1985.

QUESTIONS PRESENTED

1. Whether an order not to associate with a certain individual, given by the predecessor of respondent sheriff to the petitioner, a deputy sheriff, and petitioner's subsequent discharge by respondent, sheriff, for his failure to obey said order, violated petitioner's right to privacy and free association under the First and Fourteenth Amendments to the United States Constitution.

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OPINION BELOW

The Court of Appeals did not write an opinion. Their judgment of affirmance appears in the appendix hereto. The decision and order of the District Court for the Western District of New York, dated January 17, 1985, which order was affirmed by the judgment of affirmance, appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Second Circuit was entered on August 12, 1985 and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 18 U.S.C.) 1258 (1).

STATEMENT OF THE CASE

The jurisdiction of the district court was invoked because petitioner claims his constitutional rights under the First

and Fourteenth Amendments to the United States Constitution have been violated.

Petitioner was a deputy sheriff of Monroe County from February 22, 1971 until May 7, 1980. On April 24, 1978 petitioner was ordered not to associate with one Linda Vaccaro, the estranged wife of one Angelo Vaccaro who was being investigated by the Monroe County Organized Crime Task Force. Subsequent to that time, Angelo Vaccaro was convicted of a crime and incarcerated. In March of 1980, while Angelo Vaccaro was incarcerated, petitioner again associated with Linda Vaccaro, who was still estranged from Angelo Vaccaro, and for this association in 1980 and not for his prior association, petitioner was charged with insubordination, consorting with persons of ill repute and conduct discrediting the department. There was no dispute that other than for petitioner's association with Linda Vaccaro, petitioner performed well in his duties as a

deputy sheriff. On May 7, 1980, following a hearing, respondent Meloni discharged petitioner for insubordination only. The termination was affirmed in a November 19, 1980 arbitration proceeding.

Petitioner filed a complaint September 1, 1982 in United States District Court, Western District of New York, before Hon. Michael A. Telesca, alleging that his right of association under the First and Fourteenth Amendments to the United States Constitution had been violated.

Judge Telesca granted a motion by Respondents for summary judgment on February 18, 1983.

On Appeal, the United States Court of Appeals for the Second Circuit vacated that judgment and remanded the case for further findings. In their order remanding the case, the court wrote that the purpose of the remand was to determine whether the orders that petitioner violated in associating with Linda Vaccaro were reasonable

in March of 1980 and stated "if those orders had ceased to be reasonable on March 21 and 22, 1980, then the issue arises whether plaintiff was validly found guilty of insubordination."

Upon the remand, Judge Telesca excused himself from the case and on January 17, 1985 Hon. John T. Curtin again granted respondent's motion for summary judgment. The only new addition to the record on this second motion for summary judgment is a February 27, 1984 deposition of respondent Meloni, which deposition appears in the appendix hereto. In this deposition, respondent Meloni's main emphasis is that petitioner's association with Linda Vaccaro was bringing discredit to the department. He stated that the department might have an interest in Linda Vaccaro but did not indicate that she was the subject of any investigation.

On August 12, 1985 the United States

Court of Appeals for the Second Circuit affirmed the order of Hon. John T. Curtin granting summary judgment to respondents.

REASON FOR GRANTING OF THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISION OF ANOTHER COURT OF APPEALS AS TO THE PROPER INTERPRETATION OF THE FIRST AMENDMENT CONCERNING FREEDOM OF ASSOCIATION.

In the instant case, petitioner, a deputy sheriff, was ordered not to see a woman who was the estranged wife of an organized crime figure. Subsequent to the order, the estranged husband was convicted and sent to prison. Following the estranged husband's incarceration, appellant disobeyed the order and was discharged for insubordination. The Second Circuit has here held that such action by the Respondent does not violate Petitioner's first and fourteenth Amendment rights of freedom of association.

The Eleventh Circuit has adopted a conflicting interpretation under a similar set of circumstances in Wilson v. Taylor 733F.2d1539 (1984). In that case, the court held that a Police Officer's association with a woman he was dating, the daughter of a convicted felon who was reputed to be a key figure in organized crime, was constitutionally protected and stated "the First Amendment freedom of association applies not only to situations where an advancing of common belief occurs, but also to purely social and personal association - we conclude the relationship between Wilson and Susan Blackburn was protected under the first amendment freedom of association."

It is argued that the association of a police officer with an estranged wife of a convicted and incarcerated crime figure should be of less significance to a law enforcement agency than the association of a police officer with the daughter of a

convicted unincarcerated organized crime figure who is not estranged from her father.

In both cases, police officers were ordered not to associate with certain individuals and in both cases, such orders violated their constitutional rights. Freedom of association is a fundamental right and any restrictions thereon are "subject to the closest scrutiny", N.A.A.C.P. v. Alabama, 357U.S. 449 (1958).

2. IMPORTANT CONSTITUTIONAL ISSUES ARE INVOLVED.

Freedom of Association is a constitutional guarantee and to unreasonably deprive a certain group of citizens, police officers, of this constitutional guarantee raises far-reaching Constitutional questions which should be reviewed by this court.

In this case, it is argued that not only was petitioner denied his constitutional rights, but that the final denial by the District Court was on a motion for

summary judgment without the petitioner having an opportunity to have his day in court as to the reasonableness or unreasonableness of the Order, for the disobedience of which he was discharged.

The main thrust of Respondent Meloni's deposition seems to be that petitioner's association with Linda Vaccaro would bring discredit on the department, but it is interesting to note that at a departmental hearing the Petitioner was found not guilty of discrediting the Sheriff's Department by association with said Linda Vaccaro. Petitioner argues that unless Linda Vaccaro or her estranged husband was the subject of an investigation, his association with her is constitutionally protected. Police officers do not surrender First Amendment rights by accepting government employment, Pickering v. Board of Education 391 U.S.563 (1963), Wilson v. Taylor supra.

Petitioner does not claim that a law enforcement officer may never be fired

because of his associations with others. Shawgo v Spradlin, 701F2d470 (5th Cir.), Cert. denied _____ U.S. _____, 104 S.Ct. 404,78L. Ed.2d 345 (1983). Petitioner does claim that an order not to associate must be reasonable, under the circumstances, and in this case the order, although reasonable when originally given, became unreasonable after the incarceration of Linda Vaccaro's husband, and petitioner's discharge for his disobedience of the unreasonable order violated his Constitutional rights.

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the judgment of the Second Circuit.

Respectfully submitted,

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT G. BARON, CIV-82-816C

Plaintiff(s)

v.

ANDREW P. MELONI, Individually and as the Sheriff of the County of Monroe, and THE COUNTY OF MONROE,

Defendant(s)

SIR/MADAM: Take notice of a DECISION & ORDER of which the within is a copy, duly granted in the within entitled action on the 17th day of January, 1985 and entered in the Office of the Clerk of the United States District Court, Western District of New York on the 17th day of January, 1985.

Dated: Buffalo, New York

January 18, 1985

JOHN K. ADAMS, Clerk
U.S. District Court
Western District of
New York
U.S. Courthouse
Buffalo, New York
14202

TO: Frank S. Kedzielawa, Esq.

Nira T. Kermisch, Esq.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT G. BARON,

Plaintiff,

CIV-82-816C

-vs-

ANDREW P. MELONI, Individually and as the Sheriff of the County of Monroe; and THE COUNTY OF MONROE,

Defendants.

APPEARANCES: LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES (FRANK S. KEDZIELAWA, ESQ., of Counsel), Buffalo, New York, for Plaintiff.

JOHN D.DOYLE, ESQ., Monroe County Attorney (NIRA T. KERMISCH, ESQ., of Counsel), Rochester, New York, for Defendants.

Plaintiff Robert G. Baron, a former member of the Monroe County Sheriff's Department, brings this action under 42 U.S.C. 1983. He claims that his discharge from the Sheriff's Department violated his

constitutional right to privacy, free association, and due process. Defendants, the County of Monroe and Andrew P. Meloni, County Sheriff, have moved for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

For the reasons that follow, the defendant's motion for summary judgment is granted, and the complaint is dismissed.

Factual History

Plaintiff served as a deputy sheriff with the Monroe County Sheriff's Department from February 22, 1971, until his discharge on May 7, 1980. In early 1978, he met Linda Vaccaro, wife of reputed organized crime member Angelo Vaccaro. In March or April, 1978, his patrol car was observed in the driveway of the Vaccaro residence. While not legally separated, Linda and Angelo Vaccaro were living apart at this time. Both Mrs. Vaccaro and the residence were under surveillance by the Monroe County Organized

Crime Task Force, which was attempting to locate her husband. Although Mrs. Vaccaro was known to have had past associations with organized crime figures, she was never convicted of any crime.

On April 24, 1978, plaintiff was summoned to the office of Chief of Detectives Anthony Yazback. He was then told of Mrs. Vaccaro's identity and of the Task Force's activities. Plaintiff was ordered not to associate with Mrs. Vaccaro.

Plaintiff was seen with Mrs. Vaccaro on three occasions during the months of June and July, 1978. On July 7, 1978, plaintiff was again ordered not to associate with Mrs. Vaccaro. On July 17, 1978, departmental charges were filed against plaintiff by then-Sheriff William Lombard. Although plaintiff was unsuccessful in his state court action, seeking to have the charges dismissed before the hearing, a hearing was never held. Baron v. Lombard,

71 A.D.2d 823 (4th Dept. 1979), aff'd, 50 N.Y.2d 896, 430 N.Y.S.2d 591 (1980).

On December 7, 1978, plaintiff wrote to then-Sheriff Lombard, seeking advice as to whether the orders not to associate with Mrs. Vaccaro were still in effect. Plaintiff received a response from Chief Deputy Thomas Cellura on December 15, 1978, which stated that the orders had not been rescinded.

New charges were filed against plaintiff on April 13, 1979, based on his association with Linda Vaccaro. He again attempted to stay the hearing in state court, and this time challenged the constitutionality of the order. On July 24, 1979, New York State Supreme Court Judge Elizabeth Pine ruled against plaintiff, finding that defendants were not acting in excess of their authority in attempting to hold a disciplinary hearing on the charges. She also found that defendants had a basis for issuing the orders. No further action was taken on these

charges.

On March 21 and/or 22, 1980, Linda Vaccaro was injured in an automobile accident while driving plaintiff's privately owned car. After this incident, plaintiff was charged with insubordination, consorting with persons of ill-repute, and conduct discrediting the department.

An administrative hearing was held April 21 and 22, 1980. The hearing officer, in a May 6, 1980 decision, found plaintiff guilty of insubordination but dismissed the two remaining charges for vagueness and overbreadth. On May 7, 1980, defendant Sheriff Andrew Meloni discharged plaintiff for insubordination. The termination was affirmed in a November 19, 1980, arbitration proceeding, in which it was found that the decision to discharge plaintiff was not arbitrary or capricious.

There is no dispute that, during this entire period, plaintiff continued to perform well in his duties as a deputy

sheriff.[1]

Procedural History

Plaintiff's complaint was filed September 1, 1982, in United States District Court, Western District of New York, before Honorable Michael A. Telesca. Judge Telesca granted a motion by defendants for summary judgment on February 18, 1983.

On appeal, the United States Court of Appeals for the Second Circuit vacated that judgment and remanded the case for further findings. Judge Telesca excused himself from the case, and the action was transferred to this court.

In the October 5, 1983, order remanding the action, the Second Circuit wrote the following:

> On the present state of the record, we cannot be entirely certain whether it was appropriate to enter summary judgment for the defendants. The decision of the Hearing Officer states that the orders of April 24, 1978, and July 7, 1978, prohibiting plaintiff from associating with Mrs. Vaccaro had a reasonable basis "when issued."

> However, the Hearing Officer also stated that "it does not appear from the record before me that they continue to have such a basis." (Emphasis in original.) It is not clear whether a reasonable basis for discharging plaintiff had ceased to exist only as of the date of the Hearing Officer's decision, May 6, 1980, or also as of the earlier time in March 1980 when plaintiff was in the company of Mrs. Vaccaro at his residence and at the Genesee Hospital. . . . If the orders that plaintiff violated remained reasonable through the time of the March 1980 episode and did not become unreasonable until some time thereafter, then there would be no question that his discharge was lawful. However, if those orders had ceased to be reasonable on March 21 and 22, 1980, then the issue arises whether plaintiff was validly found guilty of insubordination.
>
> * * *
>
> Our remand is without prejudice to a renewed motion for summary judgment upon a clarified record. There may well be undisputed facts upon which a determination can be made whether the 1978 orders were reasonable in March 1980.

Item 17 (emphasis added).

Discussion

Initially, it should be noted that defendants' claim this action is barred by collateral estoppel and res judicata based on

Judge Pine's July 1979 decision denying plaintiff's request for a writ of prohibition. It may be that her decision of July 24, 1979, would have some preclusive effect as to the constitutionality of the orders in 1978 and 1979. This court need not decide that, however, since Judge Pine could not decide at that time whether the orders continued to be constitutional in March of 1980. Her decision has no bearing on that determination.

Plaintiff claims that his discharge violated his rights to privacy and free association under the first and fourteenth amendments to the United States Constitution. Pursuant to the instructions of the Second Circuit, this court must determine whether the orders prohibiting plaintiff from associating with Linda Vaccaro were still reasonable, and therefore lawful, in March, 1980.

The only new addition to the record

by defendants is the February 27, 1984, deposition of defendant Sheriff Andrew Meloni.[2] In his deposition, defendant Meloni noted that Angelo Vaccaro was incarcerated and recently convicted at the time of the final set of charges was filed in March of 1980 (see Meloni deposition, Item 22, p.11). When questioned as to his opinion of whether the department would have a continuing interest in Linda Vaccaro subsequent to Angelo Vaccaro's conviction, the Sheriff responded, "Quite possible." (Item 22, p.12.) When asked to elaborate, the Sheriff explained:

> There's no question in our mind that she was still associating with people who, again, allegedly were mobsters in this community. In that sense, I felt the association of Deputy Baron with Linda Vaccaro was truly bringing discredit to the department, and he was putting himself in the position of exploitation. He had access to information, he had access to the license plates and criminal histories and files in this organization and, I felt, was exposed by his association with the person who had been acknowledged to have kept the company of alleged mobsters in this community.

* * *

> (H)e had what every other deputy would have had: a great deal of access to a pool of information that could be sensitive . . .

Item 22, pp.13, 20.

It is important to note that, although the Organized Crime Task Force had been disbanded by 1980, there was still an ongoing investigation into organized crime, in which the Monroe County Sheriff's Department was actively involved (Item 22, p.19).

Plaintiff does not dispute that the Monroe County Sheriff's Department was involved in investigations into organized crime activity in 1980. Nor does he dispute that, as a deputy sheriff, he had access to the criminal history files and the investigative files of the Sheriff's Department.

Nor does plaintiff dispute that, at the time of the accident in March, 1980, Linda Vaccaro was still the wife of Angelo

Vaccaro. Although Angelo Vaccaro had just instituted divorce proceedings against Linda, the two were legally married until June, 1980. Plaintiff does not dispute that Linda Vaccaro was present at Angelo's January, 1980, trial (Hearing Transcript, p.91), or that she visited him during his incarceration (Item 22, p.14).

Finally, although defendant Meloni acknowledged that plaintiff had been properly carrying out his duties (Item 22, p.10), the Sheriff believed that plaintiff's association with Mrs. Vaccaro limited the areas to which he could be assigned. Defendant Meloni flatly stated that he would not place plaintiff in the detective division or give him any investigative or organized crime assignments (Item 22, pp.20-21).

Based on all of the above, the court cannot find that the orders were in any way unreasonable on March 21 and 22, 1980, or that Sheriff Meloni unreasonably enforced them. Plaintiff was a deputy sheriff with

the Monroe County Sheriff's Department and, as such, had access to various investigative files. As Sheriff Meloni pointed out, the department was still actively involved in organized crime investigations. Plaintiff had been ordered not to associate with the wife of a then-convicted organized crime leader. Although divorce proceedings had begun at that point, Linda Vaccaro was still married to Angelo Vaccaro. She had appeared frequently at his trial two months before the 1980 incident. She was known to be associating with suspected organized crime members. Under the circumstances, it was reasonable for defendant Meloni to find that plaintiff was putting himself in a tenuous position, a position which might invite exploitation and discredit the department.

Since the orders were reasonable on March 20 and 21, 1980, as shown by undisputed facts provided by defendant Meloni, plaintiff's discharge was lawful. (See Order of the Second Circuit, Item 17.)

After the action was remanded to this court, plaintiff filed an amended complaint, in which he raised a new cause of action: a violation of his procedural due process rights under the fourteenth amendment (Item 27).

Although plaintiff states that he did not have an opportunity to be heard, there was a two-day hearing held on April 20 and 21, 1980. Plaintiff was represented by counsel. The crux of plaintiff's complaint seems to be that he was denied the right to be heard before the "ultimate decision-maker" -- in this case, Sheriff Meloni.

Defendant Meloni admits that he did not read that transcript of the hearing before reaching his decision to terminate plaintiff. Yet, he was aware of the hearing officer's dismissal of two charges and of the finding that plaintiff was guilty of insubordination. He was also aware that the hearing officer recommended leniency (Item 22, p.15). Yet, he terminated plaintiff, because he

routinely terminated anyone who was found guilty of insubordination (Item 22, p.16).

Plaintiff had a full and fair hearing. Defendant Meloni accepted the findings of the hearing officer as to plaintiff's guilt on each of the charges. He discharged plaintiff, which was within his discretion. This discharge was affirmed by arbitration. In no way was plaintiff denied due process.

Defendants' motion for summary judgment is granted. The complaint is dismissed, and judgment shall be entered for defendants.

So ordered.

JOHN T. CURTIN
United States District Judge

Dated: January 17, 1985

FOOTNOTES

1 Plaintiff married Linda on July 13, 1980. They are now divorced.

2 Plaintiff stated that he had nothing further to add to the record.

The factual data relied upon by Plaintiff is contained in the documents already on file in the United States District Court Clerk's Office. There are no further exhibits or documents being submitted by Plaintiff at this time.

Item 25, 3.

APPENDIX B

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 12th day of August one thousand nine hundred and eighty-five.

PRESENT:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE J. EDWARD LUMBARD,

HONORABLE JON O. NEWMAN,
Circuit Judges.

----------x

ROBERT G. BARON,

Plaintiff-Appellant,

- against - 85-7145

ANDREW P. MELONI, et al.,

Defendants-Appellees.

----------x

Appeal from the United States District Court for the Western District of New York.

This cause came on to be heard on

the transcript of record from the United States District Court for the Western District of New York, and was taken on submission.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said district court is AFFIRMED.

1. On October 5, 1983, this court entered an order vacating the judgment of the district court, which had granted defendants' motion for summary judgment, and remanding for clarification. Jurisdiction over any subsequent appeal was retained.

2. After the remand, the record was supplemented by defendant Meloni's deposition and clarified. On January 17, 1985, the district court granted defendants' renewed motion for summary judgment.

3. Plaintiff has again appealed. On the basis of the record now before us, for the reasons stated by Chief Judge John T. Curtin in his decision and order of January 17, 1985, we are satisfied that the orders violated by appellant were reasonable and therefore lawful on March 21-22, 1980, when he disobeyed them.

4. We have also reviewed appellant's other claims and find them to be without merit.

5. The judgment of the district court is affirmed.

WILFRED FEINBERG, Chief Judge

J. EDWARD LUMBARD,

JON O. NEWMAN,

Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

APPENDIX C

In the
UNITED STATES COURT OF APPEALS
For the Second Circuit

ROBERT G. BARON,

Plaintiff-Appellant,

-vs-

ANDREW P. MELONI, Individually and as sheriff of the County, and THE COUNTY OF MONROE,

Defendants-Appellees.

On Appeal From the
United States District Court for the
Western District of New York
No. 82-816C

Examination Before Trial, held at the office of JOHN D. DOYLE, ESQ., County Attorney, 307 County Office Building, Rochester, New York, on February 27, 1984, commencing at 10:14 a.m.

APPEARANCES: LIPSITZ, GREEN, FAHRINGER, ROLL, SCHULLER & JAMES, ESQS.
One Niagara Square
Buffalo, New York 14202
Appearing on behalf of the Plaintiff-Appellant
BY: FRANK S. KEDZIELAWA, ESQ., of Counsel

JOHN D. DOYLE, ESQ.
County Atorney
307 County Office Building
Rochester, New York 14614
Appearing on behalf of the
Defendants-Appellees
BY: NIRA T. KERMISCH, ESQ.,
of Counsel

REPORTED BY: DEBBIE C. MERRITT, RPR
Midtown Reporting Service
501 Times Square Building
Rochester, New York 14614
(716) 325-2130

I N D E X T O W I T N E S S E S

WITNESS	EXAMINED BY	Pages
Andrew P. Meloni	Mr. Kedzielawa	
" " "	Mrs. Kermisch	

MRS. KERMISCH: It is hereby stipulated by and between the attorneys for the respective parties that the presence and oath of the referee be waived;

It is further stipulated that all objections, except as to the form of the question, be reserved to the time of the trial;

And it is further stipulated that Debbie C. Merritt, Notary Public, may swear in the witnesses.

MR. KEDZIELAWA: So stipulated.

A N D R E W P. M E L O N I, Defendant-Appellee, called herein as a witness, having first been duly sworn, was examined and testified as follows:

EXAMINATION BY MR. KEDZIELAWA:

Q. Sir, when did you first start with the department?

A. March 1, 1954.

Q. Skipping a few years to 1978, what position did you hold with the department in that year?

A. In '78, I was not with the department. I had a six-year absence from January 1, 1974 through January 1, 1980.

Q. May I ask where you were employed in 1974.

A. Yes, sir. In '74, through '77, I was Public Safety Administrator for the County of Monroe; and I believe -- in March of '77, I was appointed Security Director for the University of Rochester, until becoming Sheriff in January of '80.

MRS. KERMISCH: You were elected Sheriff.

THE WITNESS: Well, I became it too.

MRS. KERMISCH: True.

MR. KEDZIELAWA: That was my next question.

Q. Did Sheriff Lombard retire, or did he run for re-election and --

MRS. KERMISCH: He was defeated.

A. I defeated the Sheriff in the election of '79.

Q. May I ask when you were first aware of a verbal order having been given to the Plaintiff, Robert Baron, with regards to his relationship with Linda Vaccaro?

A. Before I became Sheriff, actually.

Q. All right.

A. During the election, obviously I became somewhat aware of what had been going on in the department during my absence; and in that process, I learned of the order to Deputy Baron.

Q. Were those orders put in writing, or was your understanding that they were strictly verbal?

A. It was my understanding there was an order from Sheriff Lombard. I didn't question whether it was verbal or in

writing.

Q. Did you ever read the transcript of the hearing on the three charges -- I believe the hearing was in 1980 -- the transcript from the Hearing Officer?

A. No, sir, I did not.

Q. Could you state for us your understanding as to the primary reason why Sheriff Lombard gave this verbal order?

A. Apparently Deputy Baron was seen in the company of Linda Vaccaro on a number of occasions, either through surveillance or by a direct witness reporting to Sheriff Lombard. That is basically what the order was about; that he, as a Deputy Sheriff, was in the company of a woman whom Sheriff Lombard felt was bringing discredit to the department.

Q. Did you know that there was an Organized Crime Task Force in existence in 1978 --

A. I did.

Q. (Continuing) -- and that they were

trying to locate Angelo Vaccarc, who was then Linda's husband?

A. Yes, sir.

Q. Do you know whether or not the order would have been issued if there was no Task Force in existence in 1978?

A. I believe so, I don't believe the facts would have changed.

Q. And you have not read this --

A. No, sir.

Q. (Continuing) -- the transcript of the hearing?

A. No, sir.

Q. Do you know former Chief of Detectives Yazback?

A. Yes, sir.

Q. I do not recall his first name.

MRS. KERMISCH: Anthony.

A. Anthony.

Q. So therefore, you would not know that in the hearing transcript he said that if the Task Force had not been in

existence, he had his doubts as to whether the order would have been issued.

A. Well, the facts remain the same. I don't believe whether there was a Task Force or not would have altered Linda Vaccaro's image in the community and Sheriff Lombard's request not to have Deputy Baron associate with her. I don't believe that.

Q. Did you know that at a prior hearing there was some testimony that Deputy Baron's association with Miss Vaccaro has caused some tensions with the District Attorney's Office at that particular point in time? Were you aware of that?

A. Yes, I am.

Q. And that the District Attorney had expressed some concern at the time with the integrity of this surveillance or attempt to locate Angelo Vaccaro --

MRS. KERMISCH: Form -- Oh, I am sorry,

finish your question.

Q. (Continuing) -- and in trying to locate him, they were following and surveilling Linda Vaccaro, and that is how they learned of Deputy Baron's relationship?

A. Yes, sir.

Q. Is it your understanding that perhaps the order was issued, the order by Sheriff Lombard was issued at the insistence of or at the request of the District Attorney's Office?

A. That's very difficult for me to comment upon. I wasn't there. I don't know.

Q. Do you know whether or not prior to March 21, 1980, which is the specific incident, the auto accident with --

A. Yes, I understand.

Q. Do you know prior to that date, prior to the accident, if Deputy Baron obeyed the order?

A. Yes, I -- There was rumor that -- there were a number of people in our department

who felt that he was not, but there was no clear-cut evidence, a witness' statement to me or anybody else in the department saying that he was not.

Q. When you became Sheriff, were you aware that there were two prior sets of charges?

A. Yes, sir.

Q. Was there any specific reason why you did not direct the pursuit of those charges when you --

A. One of the charges, on the advice of my counsel -- one of the charges was still pending in the Court of Appeals, I believe, or the Appellate Court; and on --

MRS. KERMISCH: Court of Appeals.

A. (Continuing) -- and on that basis, we wanted to wait until there was a decision from that court, in terms of the direction we would take thereafter.

Q. Speaking with regards to the incident in March of 1980, who decided what charges

would be brought against Deputy Baron?

A. In my organization, the decision to bring charges is always a collective one. It's based on a meeting held with Internal Affairs, the captain of the zone from where he is currently employed, my undersheriff, the Chief of Detectives, and in this case I believe the District Attorney was involved too. The Chief of Detectives was Anthony Yazback.

Q. He was still Chief at that time?

A. Yes, he was.

Q. Prior to this auto accident in 1980 with Linda Vaccaro using Deputy Baron's car, had you received any communications from the District Attorney's Office regarding Robert Baron and Linda Vaccaro?

A. Verbal communication; nothing in writing -- or oral comunication, I should say. Simply, "What's happening with Baron" What's going on in this matter" and in

that sense. Nothing formal; informal.

Q. What was your reply to the District Attorney?

A. We were waiting for the Appellate Court to make a decision on this matter.

Q. So their inquiry was with regards to the prior charges?

A. Yes, what was happening with the charges. There was a lot of concern about where we were going with this matter.

Q. Would you say that there was any tension at that time between the District Attorney's Office and your office regarding Deputy Baron still being on the force up to March of 1980?

A. I think concern may be a better way to describe the relationship of the District Attorney and the present Sheriff. I think that would be a better way to describe it.

Q. Are you aware of some correspondence to your office from I think it is an Assis-

tant District Attorney in early 1980, I believe it was January, praising Deputy Baron and a number of other deputies for their fine work --

A. Yes, sir.

Q. (Continuing) -- in a number of zones? Do you recall that?

A. Yes.

Q. So you also had some positive comments regarding Deputy Baron --

A. Sure.

Q. (Continuing) -- from the Sheriff's Department?

A. Sure, as I would expect.

Q. Do you recall whether or not Angelo Vaccaro had been convicted or incarcerated at the time the charges were filed in 1980?

A. Yes, he was.

MRS. KERMISCH: I do not know.

A. I believe he was, Now, time frames here -- In my opinion at this point, he was

convicted, yes.

Q. Were you aware that in 1978 Internal Affairs of the Sheriff's Department had investigated Robert Baron regarding his relationship with Linda Vaccaro?

A. Yes, sir.

Q. And you are aware that it showed that he had no contact with Angelo Vaccaro?

A. I -- I can remember specifically discussing that file. I don't recall the specifics of the file. I don't -- I couldn't answer that question.

Q. So you would not recall that the polygraph tests corroborated the fact that he had no contact with Angelo Vaccaro.

A. I don't really recall that, Frank.

Q. And similarly, the polygraph test showed that at least as of 1978, he had no sexual relations with Linda Vaccaro.

MRS. KERMISCH: Objection as to form.

A. That's something I couldn't answer.

Q. Sheriff, would it be your opinion that

the department would have an an interest in Linda Vaccaro subsequent to the conviction or incarceration of Angelo Vaccaro?

A. Quite possible. Again, very difficult to determine or predict, but quite possible.

Q. So at that time, do you recall having a specific interest in her whereabouts or in continuing a surveillance of her once her husband had been apprehended and convicted?

A. Well, if you are suggesting to me was she a target --

Q. Yes.

A. Well, I think she just came under surveillance. I'm not sure she was a target.

Q. This order to refrain from contact or association with Linda Vaccaro, what would you say was the purpose behind it once, say, her husband had been

incarcerated?

A. Through -- We are going back to "78 or "77 now, but through intelligence-gathering and a great deal of information gathering by people not only in the Task Force, but others in law enforcement, Linda Vaccaro was identified as a person who had associations not only with, obviously, her husband, Angelo, but other members of alleged organized crime, people in this community.

Q. But after, say, her husband had been incarcerated in 1980, would that still be the same reason or basis --

A. Yes.

Q. (Continuing) -- for the order?

MRS. KERMISCH: Can you elaborate on that -- Do you mind if I just ask him to fill in the gap?

MR. KEDZIELAWA: Sure.

MRS. KERMISCH: (Continuing) -- as to the reason why --

THE WITNESS: There's no question in our mind that she was still associating with people who, again, allegedly were mobsters in this community. In that sense, I felt the association of Deputy Baron with Linda Vaccaro was truly bringing discredit to the department, and he was putting himself in the position of exploitation. He had access to information, he had access to the license plates and criminal histories and files in this organization and, I felt, was exposed by his association with the person who had been acknowledged to have kept the company of alleged mobsters in this community.

Q. You do not have --

MRS. KERMISCH: Could I ask one more question?

MR. KEDZIELAWA: Sure, go ahead.

MRS. KERMISCH: To your knowledge, did she visit her husband in jail?

THE WITNESS: Yes, she did.

MRS. KERMISCH: To your knowledge, she kept in contact with him --

THE WITNESS: Oh, yes.

MRS. KERMISCH: (Continuing) -- even when he was incarcerated?

THE WITNESS: Yes, oh, yes. We have visitation records.

Q. But you have nothing to show any specific attempts to exploit Deputy Baron by members of organized crime.

A. I have nothing to suggest that that has occurred. My concern, as it is with every deputy, is that their exposure to that form of exploitation is quite limited or non-existent.

Q. At the time of this incident in March of 1980, did you have any phone calls from the public criticizing the department? Can you recall any phone calls or a rash

of phone calls? Just to the best of your recollection.

A. Oh, people outside of the system, the criminal justice system?

Q. Yes, the general public.

A. No.

Q. Do you recall any public criticism, say, like in newspaper editorials?

A. I certainly recall a great deal of coverage on the issue; and I guess, by interpretation, if one would have to deem whether that was to the credit or to the discredit of the organization, I sensed it was to our discredit.

Q. Again, I would ask you, this Hearing Officer's transcript on the charges brought against Deputy Baron, did you review it prior to discharging --

MRS. KERMISCH: You already asked that several times.

A. No, I did not.

Q. You are aware then that he was found

guilty on one of the charges.

A. Yes.

Q. And that was of insubordination?

A. Yes.

Q. The Hearing Officer had recommended leniency; you are aware of that?

A. Yes.

Q. Can I ask your reasons why you did not give a lenient sentence?

A. First of all, I believe insubordination may be the most serious charge in the book. My history, as Sheriff, with insubordination has been termination. When an officer in my organization deems it appropriate to disobey an order that a legitimate command officer has given, I sense that's the beginning of the breakdown of discipline, and discipline in this organization is essential. In that sense, I felt it was that serious to deem termination.

Q. Other than this incident with Linda

Vaccaro, say, in March of 1980 and his relationship with her, was Deputy Baron performing his duties adequately?

A. Yes.

Q. You know of no other reasons, say, in his personnel file that he would be discharged for or disciplined other than that incident.

A. No.

Q. Did you ever work with him in the department?

A. Well, side-by-side, no, sir. Certainly I was his boss, as I was undersheriff when I left the organization, second in command; and in that sense, he's worked for me. I believe he's been on since 1970, I believe, '71.

Q. Other than this incident or relationship with Linda Vaccaro, can I ask you if he had a reputation within the department and what that was?

A. Remember, now, I was gone six years --

Q. Sure.

A. (Continuing) -- so, you know, that means the last six years, I don't know what he was doing.

MR. KEDZIELAWA: I will withdraw the question then.

Q. Are you aware that he and Linda are now divorced?

A. Yes sir -- At least, I've been told that. I'm not sure it's fact.

Q. Well, they have.

A. Okay.

Q. Outside of this incident of insubordination, you know of no other reason why, say, the department would not re-hire or another department in the law enforcement agency would not re-hire or hire Deputy Baron?

A. I -- I wouldn't comment on that because I don't think it's my place to talk about re-hiring at this point.

MR. KEDZIELAWA: That is basically all I have. If you have some --

MRS. KERMISCH: I have a couple of questions.

EXAMINATION BY MRS. KERMISCH:

Q. In 1980, when you were elected Sheriff, were Mr. Baron's activities of any concern in the department?

A. Absolutely, yes.

Q. Who was concerned with his activities as relating to Linda Vaccaro?

A. We talked about the District Attorney earlier, and we talked about other police agencies commenting; and certainly, there were rumors and vibes going through the organization. This was a very dificult time in the Sheriff's Department. We had just gone through a series of two years of headlines in terms of alleged improprieties and wrongdoings, and this just catapulted. It was an embarrassment. A lot of the deputies wanted to know what was going on and why wasn't he being terminated. It was a general consensus in the organization that things were moving somewhat slowly with Mr. Baron.

Q. You stated that in addition to the concern within the department, there was also concern outside the department.

A. Yes.

Q. And that was specifically regarding his relationship --

A. -- with Linda Vaccaro, yes, ma'am.

Q. When a determination was made to bring charges against him, will you state again what the concerns were regarding his associations with Linda Vaccaro?

A. Well, certainly one, the obvious is the discredit it brings to the department with the headlines that were being made. More importantly though, I believe every deputy has the right -- has the obligation, rather, not to expose himself to associations with people who could exploit his potential to gather information or intelligence. Given the fact that we were heavily involved in organized crime investigations at the time, I felt his association with a

person who had been identified and seen with alleged organized crime figures in this community was an exposure that I could not tolerate.

Q. In 1980, to your knowledge, was there an ongoing investigation into the organized crime activities in this area?

A. Absolutely.

Q. And that was even though the Task Force on organized crime had been disbanded?

A. Oh, yes.

Q. Was you department involved in that?

A. Yes, ma'am.

Q. Did Deputy Baron have any access to information regarding such investigation, or could he have had such access?

A. He certainly could. We talked about the general information base that's available to every deputy. That could be a license plate, a registration check, a records check, access to all of our criminal history files within the organization, access to any on-hand

investigative file that would be in the Records or CID divisions; and in that sense, he had what every other deputy would have had; a great deal of access to a pool of information that could be sensitive -- or, depending on how it was used, could be sensitive. A license plate is not a sensitive piece of data. In the wrong hands, it can be a very sensitive piece of data.

Q. Did you have any feelings regarding assignment, as far as Deputy Baron was concerned, in regard to his relationship? In other words, did you feel that you would be limited in the areas to which he could be assigned --

A. Absolutely.

Q. (Continuing) -- as he was associated with her?

A. Absolutely. I would not have put him in plain clothes or in the detective division based on the exposure he had with Linda Vaccaro.

Q. Therefore, would it be fair to say that you felt that your hands would be tied --

MR. KEDZIELAWA: Object to the form of the question.

MRS. KERMISCH: (Continuing) -- or his superior's hands would be tied in an assignment?

A. (No response.)

Q. That is okay, you can answer it.

THE WITNESS: Can I answer it?

MR. KEDZIELAWA: Yes.

A. I -- I felt strongly that his diversity as far as a police officer is concerned was quite limited on the basis of the evidence I had in hand, that he was seen with a person who had ties with organized crime figures.

Q. How would you consider then his effectiveness in the department, the performance of his duties in the department?

A. Limited in scope, certainly to look at the uniform aspect only; and certainly, never to have graduated to an organized crime assignment per se or investigative assignment per se -- well, intelligence gathering is part of the process.

Q. As to Linda Vaccaro, are you familiar with her history?

A. Certainly not in total. Basically, since I've become Sheriff, I've been familiar with --

Q. What do you know about Linda Vaccaro herself?

A. Well, Linda is --

MR. KEDZIELAWA: Object to --

A. (Continuing) -- or was --

MR. KEDZIELAWA: Object to the form of the question.

MRS. KERMISCH: What is wrong with the form of the question?

MR. KEDZIELAWA: Most of it is in the hearing transcript.

MRS. KERMISCH: He never testified though.

MR. KEDZIELAWA: No, but we already know about Linda Vaccaro from the Hearing Officer's transcript.

MRS. KERMISCH: No, we do not, not from him.

MR. KEDZIELAWA: But he does not know as much as what is contained in the transcript.

MRS. KERMISCH: Well, I do not know if he does not know as much as what is in here, but he has his own knowledge, and that is part of his consideration as to --

MR. KEDZIELAWA: It is a repetition of what we already have in the file, but I --

MRS. KERMISCH: I do not know what he is going to say.

Go ahead.

A. Well, based on my review of the facts as I came into office -- and you have to remember, it was only three months after I was in office that all of this

came about -- I was convinced that Linda Vaccaro had associates in this community and had been identified enough times with people who were alleged to be mobsters that --

Q. Do you know about her prior history; in other words, prior to marrying Angelo Vaccaro, whom she associated with?

A. Well, I think I -- Forgive me for going back to -- What year, for instance?

Q. Any time throughout her life.

A. Well, I've heard a number of stories about her prior history and her associations even before she married Angelo.

Q. Were you aware that she was a mistress to --

A. I was aware that she and Chirico were very close friends. Some would suggest closer than platonic, but yes.

Q. Who was Chirico?

A. He was an alleged -- Dominic Chirico was an alleged organized crime figure in this community, who has since left us.

Q. In what fashion did he leave us?

A. I believe he was murdered in 19 -- I don't remember the year.

Q. Do you know by whom?

A. (No response.)

Q. Do you know the circumstances of this murder?

A. Yes. She was present -- or she was seen just before the homicide took place with him.

Q. Do you know who the killers were?

A. I'm not --

Q. Or the alleged killers? You do not remember the names?

A. I don't remember the names.

MR. KEDZIELAWA: Now, you are not suggesting Linda was a witness to --

MRS. KERMISCH: No, I am not.

THE WITNESS: No, I'm not either.

A. I don't remember all the names.

Q. Was he killed by other alleged Mafia figures?

A. Oh, yes, yes, he was.

Q. That was during a power struggle?

A. Yes, in the City of Rochester.

Q. Are there any other factors that you would like to raise which went into the decision to bring the charges in 1980?

A. Well, I think it's important to understand that the decision was based on a great deal of communication with other members of my organization. This was not a unilateral decision by the Sheriff, as none of these decisions, in terms of discipline, are in my organization.

Two, the challenge of the Sheriff by his constituency at this point was to remove the cloud that had been placed over this department; and certainly, to have one of my deputies associate with a woman who had been identified as being close to a number of organized crime figures was keeping that cloud over the department's head.

Insubordination, as I had said before, is the most serious charge I would consider any deputy being brought up on; and in that sense, I handled this matter seriously.

Those are the three factors that I thought were very important in this decision.

Q. Let us discuss the cloud a little bit. When you took office, you beat Sheriff Lombard?

A. Yes, ma'am.

Q. One of the reasons, I think it would be fair to assume, was the cloud that was over the department.

MR. KEDZIELAWA: I object to the question. Why someone wins or loses an election is --

MRS. KERMISCH: Well, I think that is --

MR. KEDZIELAWA: It is speculation why people win or lose an election.

MRS. KERMISCH: In this case, I do not think it is.

MR. KEDZIELAWA: Well, you cannot state that for a fact.

MRS. KERMISCH: Well, in addition to Mr. Meloni's obvious charm.

MR. KEDZIELAWA: He can give an opinion.

A. In my opinion --

MRS. KERMISCH: Let me withdraw this question.

Q. Can you discribe some of the problems that were in the department during the last five years prior to your election --

A. Yes, ma'am.

Q. (Continuing) -- from '74 to '79?

A. Well, as you know, the department had done a wonderful job in bringing a lot of the alleged mobsters to trial and conviction, and part of the process was some alleged tampering with evidence, and that brought the beginning of a series of allegations against the department, and it went downhill from

there: three deputies had been arrested for burglary; another deputy had been arrested for stolen hubcaps; there were stories and allegations about improprieties as it related to how the mobsters who were in custody, federal witness custody in the jail, were handled; missing property. This series went on and on by the Gannett press about all of the kinds of things that were going on in the Sheriff's Department.

Q. And that finally came to a head in what years?

A. In -- It started in '77; came to a head during the election, obviously, of '79, politically speaking anyways, and --

Q. So between '77 and seventy -- '80.

A. '79.

Q. (Continuing) -- and December of '79, all this --

A. Right, the headlines were -- acknowledgements of alleged improprieties were headlining the Gannett press every day.

That took a terrible, terrible toll on the organization. There was a great deal of distrust; our self-worth, our self-image went to hell, and I took over, you know, a psychologically depressed organization after such a thing, but it was --

Q. Did you vow to --

A. My charge was and my campaign theme was to return credibility and remove the cloud. And certainly, you know, I -- I think, when you talk about winning or losing, I didn't win the election; I think my predecessor lost it, and I think that's a better word to describe what happened.

Q. Your concern was to have a department that would be --

A. -- as clean as a hound's tooth and no corner cutting. One of the things that I have told every class of deputies that I've ever recruited and hired since 1968

was basically that they are deputy sheriffs 24 hours a day; that I expect their off-duty behavior to be as honorable and with as much integrity, which is obvious to the community, as when they're on duty eight hours; that there's no distinction between off-duty and on-duty time as it relates to the image and especially the perception they give the public. That speech I have given to every sheriff's deputy, whether he be civil, jail or police bureau, since I've been an undersheriff and handled recruiting. And in that sense --

Q. Was that speech also given to Deputy Baron?

A. Absolutely.

Q. And he was aware of it?

A. Absolutely.

MRS. KERMISCH: That is all I have.

EXAMINATION BY MR. KEDZIELAWA:

Q. This time period you just spoke of between 1977 and '80, when the department was psychologically depressed, I think you said --

A. Yes.

Q. (Continuing) -- you were not with the department at that time, is that correct?

A. No, sir.

Q. So your knowledge of what was going on in the department relied upon what other people were telling you.

A. Yes, sir.

Q. Including newspaper headlines?

A. Yes, sir.

Q. Also, with regards to Deputy Baron's duties, was he ever assigned plain-clothes duties that you can recall?

A. I don't recall.

Q. Was he ever a detective?

A. No, he was not.

Q. Did he ever express a desire to become a detective, to the best of your recollection?

A. Not while I was in office. I think prior to he may have.

Q. Did he ever request plainclothes duty, to the best of your recollection?

A. While I was Sheriff or --

Q. Yes.

A. (Continuing) -- or before?

Q. Well, either, whatever you recall, when you were with the department or after you became Sheriff.

A. I don't remember.

Q. Is it true that one of the officers or superiors within your department who helped you make this decision regarding Deputy Baron was Anthony Yazback?

A. Yes, sir.

Q. Did he subsequently leave the department, the Sheriff's Department?

A. Yes, sir.

Q. Was that because he had been accused of a misdemeanor or shoplifting?

MRS. KERMISCH: I am not going to allow him to answer that.

MR. KEDZIELAWA: Well, we just discussed other deputies in the department who left because of criminal allegations or rumors.

MRS. KERMISCH: It has nothing to do with that.

MR. KEDZIELAWA: Well, he can answer the question.

MRS. KERMISCH: No, he cannot. There were no names mentioned.

MR. KEDZIELAWA: Yes, he can.

MRS. KERMISCH: No, I am not going to let him answer the question. He was never convicted, okay, therefore --

Q. Was he accused of any misdemeanor activity that you recall?

MRS. KERMISCH: Was he?

A. Yes.

MR. KEDZIELAWA: I will settle for that. That is fine. I think that is all I have, Sheriff.

(Whereupon the Examination Before Trial adjourned at 10:55 a.m.)

STENOGRAPHER'S CERTIFICATION

STATE OF NEW YORK :

COUNTY OF MONROE :

I, DEBBIE C. MERRITT, being a registered professional reporter in the State of New York, do hereby certify that I reported in stenotype shorthand the deposition of Andrew P. Meloni on the 27th day of February, 1984, that the witness was sworn; and that the foregoing pages, numbered A-1 to A-62 were typed under my direction and control and constitute a true record of the deposition of the witness.

I further certify that I am neither attorney nor counsel for any of the parties nor a relative or employee of any attorney or counsel connected with the action; nor financially interested in the outcome of the action.

DEBBIE C. MERRITT, RPR

Dated at Rochester, New York

this 7th day of March, 1984.